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KEVIN SPACEY FOWLER and
10 M. PROFITT PRODUCTIONS, INC.
11

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 JOHN DOE, an individual,	) Case No.: 2:19-cv-00750-RSWL (SSx)
15)
16 Plaintiff,	) DECLARATION OF JAY P.
17	) BARRON IN SUPPORT OF
18 vs.	) DEFENDANT FOWLER'S <i>EX</i>
19	) <i>PARTE</i> APPLICATION FOR AN
20 KEVIN SPACEY FOWLER, an	) ORDER TO SET DEADLINES
21 individual, M. PROFITT	) UNDER RULE 26 DUE TO
22 PRODUCTIONS, INC., a California	) PLAINTIFF'S WILLFUL
23 Corporation, and DOES 1-9, inclusive.	) REFUSAL TO TIMELY ENGAGE
24	) IN THE REQUIRED RULE 26(f)
25 Defendant.	) CONFERENCE
26)
27	) <i>[Ex Parte Application and</i>
28	) <i>Memorandum of Points and</i>
	) <i>Authorities Filed Concurrently and</i>
	) <i>[Proposed] Order Lodged</i>
	) <i>Concurrently]</i>
)
	) Complaint Filed: September 27, 2018
)

1 I, Jay P. Barron, declare as follows:

2 1. I am an attorney duly admitted to practice in the State of California and
3 in the United States District Court for the Central District of California. I am senior
4 counsel with the law firm Keller/Anderle LLP, counsel of record for Defendants
5 Kevin Spacey Fowler and M. Profitt Productions, Inc. I make this declaration in
6 support of Defendant Fowler's *Ex Parte* Application For An Order To Set Deadlines
7 Under Rule 26 Due to Plaintiff's Willful Refusal To Timely Engage In Required
8 Rule 26(f) Conference (the "Application"). I have personal knowledge of the
9 information stated below and could testify to it under oath.

10 2. After Mr. Fowler filed a Rule 12 motion regarding the original
11 complaint on February 7, 2019, Plaintiff filed a First Amended Complaint on
12 February 19, 2019. (*See* ECF Nos. 8, 14.) Like the original complaint, Plaintiff's
13 FAC was filed under a pseudonym even though he had not obtained (or even
14 sought) permission to remain anonymous by the time it was filed.

15 3. Following Plaintiff's filing of the FAC, four motions were filed, all of
16 which are set to be heard on April 16, 2019: (1) Defendants' Rule 12 motion
17 regarding the FAC that concerns Plaintiff's continuing use of a pseudonym, (2) Mr.
18 Fowler's motion for misjoinder of Profitt Productions, (3) Plaintiff's motion to
19 remand due to his attempt to add a non-diverse defendant after removal, and (4)
20 Plaintiff's belated motion for leave to proceed anonymously. (*See* ECF Nos. 19, 21-
21 23, 26, 30.)

22 4. I had a telephone call with Plaintiff's counsel, Mary Olszewska, on
23 February 22, 2019 to meet and confer about some of the pending motions per Local
24 Rule 7-3. During that call, we briefly discussed other approaching deadlines, and I
25 mentioned that the deadline to conduct the Rule 26(f) conference was approaching
26 in mid-March.

27 5. On March 7, 2019, at 1:11 p.m., I e-mailed Ms. Olszewska to inquire
28 whether she or Plaintiff's lead counsel, Genie Harrison, was available on Monday,

1 March 11, 2019 for the Rule 26(f) conference. Attached as **Exhibit A** to this
2 declaration is a true and correct copy of my e-mail to Ms. Olszewska.

3 6. Ms. Olszewska sent me an e-mail regarding another subject later in the
4 day on March 7th but did not address the request to schedule the Rule 26(f)
5 conference. I sent a follow up e-mail on March 8, 2019, at 9:37 a.m. to again
6 inquire about her or Ms. Harrison's availability for the Rule 26(f) conference on the
7 following Monday. Plaintiff's counsel did not respond. Accordingly, I followed up
8 with a call to Ms. Olszewka at approximately 12:30 p.m. on March 8th. I was
9 unable to reach her but left her a voicemail message explaining the reason for my
10 call and the need to schedule the Rule 26(f) conference due to the approaching
11 deadline on the following Monday. Plaintiff's counsel still did not respond. I
12 therefore sent another e-mail to Ms. Olszewska at 6:17 p.m. Finally, at 6:33 p.m.,
13 Ms. Harrison, who had been copied on this e-mail chain, responded to my e-mail
14 and proposed either March 12th or 13th instead of March 11th. I responded at 6:40
15 p.m. to reiterate our calculation of March 11th as the statutory deadline, and I asked
16 Ms. Harrison if she was available at a time that day other than the 10:00 a.m. time
17 we had been proposing.

18 7. Ms. Harrison responded the following day, March 9th, at 12:14 p.m.,
19 stating for the first time that Plaintiff did not think the Rule 26(f) conference was
20 appropriate at this time. I responded to Ms. Harrison at 1:52 p.m. and informed her
21 of our position that the Federal Rules of Civil Procedure require the Rule 26(f)
22 conference to proceed even though no scheduling conference had been set by the
23 Court, which was one of her stated reasons for not engaging in the conference. I
24 asked Ms. Harrison to reconsider her position or to provide authority that a party
25 could unilaterally delay or defer engaging in a Rule 26(f) conference. Ms. Harrison
26 responded the following day, March 10th, at 1:12 p.m. Her e-mail stated in part: "I
27 have specifically informed defendants that plaintiff will not participate in a Rule 26
28 conference at this time (1) before any scheduling conference was set by the Court,

1 (2) when plaintiff is challenging the jurisdiction of this Court, (3) based [on] your
2 reading of Rules 16 & 26 with which I disagree.” Ms. Harrison did not give any
3 explanation or reason for his disagreement with my “reading” of the rules. Attached
4 as **Exhibit B** to this declaration is a true and correct copy of this e-mail chain
5 between Plaintiff’s counsel and me from March 7-10.

6 8. On March 14, 2019, at approximately 3:30 p.m., I telephoned
7 Plaintiff’s counsel, Mary Olszewska and provided her notice that Mr. Fowler would
8 be filing the Application, explained the basis for it, and informed her that Plaintiff
9 had 24 hours to file an opposition and were to contact the Courtroom Deputy Clerk
10 within 24 hours as to their position. Ms. Olszewska and I conferred further about
11 the issue but were unable to resolve the dispute. Ms. Olszewska suggested Plaintiff
12 would oppose the Application but left open the possibility Plaintiff would agree to at
13 least some of the requested relief after seeing the Application.

14 9. Notwithstanding time spent by others at my firm, I have spent over four
15 (4) hours preparing the Application and supporting documents. My hourly rate
16 charged to Mr. Fowler for this matter is \$650 per hour. Accordingly, Mr. Fowler
17 seeks a monetary award of at least \$2,600 in sanctions against Plaintiff and/or his
18 counsel to compensate him for the reasonable expenses and attorneys’ fees incurred
19 in bringing the Application, which was necessitated by Plaintiff’s failure to comply
20 with Rule 26(f).

21 I declare under the penalty of perjury that the foregoing is true and correct to
22 the best of my knowledge.

23 Executed on March 14, 2019.

24 /s/ Jay P. Barron

25 Jay P. Barron
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I am over the age of 18 and not a party to the within action. My business address is 18300 Von Karman Avenue, Irvine, California 92612-1057. On **March 14, 2019**, I served the foregoing document described as

on the following-listed attorneys who are not on the list to receive e-mail notices for this case (who therefore require manual notice) by the following means of service:

SERVED BY CM/ECF. I hereby certify that, on **March 14, 2019**, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. The filing of the foregoing document will send copies to the following CM/ECF participants:

Genie Harrison, genie@genieharrisonlaw.com
Amber Phillips, amber@genieharrisonlaw.com
Mary Olszewska, mary@genieharrisonlaw.com

/s/ Courtney L. McKinney

Courtney L. McKinney